

Docket No. 1013-028

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CENTRAL FAX CENTER

PATENT

AUG 07 2006

THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

|  |                         |
|--|-------------------------|
| In re Application of                           |                         |
| Inventor: Guy ROUSSELIN                        | : Confirmation No. 5362 |
|  | :                       |
| U.S. Patent Application No. 10/671,866         | : Group Art Unit: 3753  |
| :  |                         |
| Filed: September 29, 2003                      | : Examiner: John C. FOX |
| :  |                         |
| For: FLUID DISTRIBUTION FLOW ADJUSTMENT DEVICE |                         |

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attn: BOARD OF PATENT APPEALS AND INTERFERENCES

**BRIEF ON APPEAL**

Further to the Notice of Appeal filed June 6, 2006, in connection with the above-identified application on appeal, herewith is Appellant's Brief on Appeal. The Commissioner is authorized to charge Deposit Account No. 07-1337 in the amount of \$500 for the statutory fee.

To the extent necessary, Appellant hereby requests any required extension of time under 37 C.F.R. §1.136 and hereby authorizes the Commissioner to charge any required fees not otherwise provided for to Deposit Account No. 07-1337.

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**TABLE OF AUTHORITIES**

**Cases**

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**I. Real Party in Interest**

The real party in interest is GCE SAS, a corporation of France.

**II. Related Appeals and Interferences**

There are no related appeals and/or interferences.

**III. Status of Claims**

Claims 3-11, 13 and 15 are allowed.

Claims 1-2, 12, 14, 16-23 have been cancelled.

Claims 5 and 24-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirements.

**IV. Status of Amendments**

There was no amendment after Final Rejection and all prior amendments were entered.

**V. Summary of Claimed Subject Matter**

The subject matter of claim 24, upon which claims 25, 26 and 5 depend, is directed to a fluid distribution flow adjustment apparatus (title, page 1, line 1) including a body arrangement having inlet body 2 and outlet body 3 (Figure 1a, page 4, lines 4 and 5). Outlet body 3 has a fluid outlet including drilling 12 leading to outlet tube 11 (page 4, line 27-page 5, line 3). Inlet body 2 includes a fluid inlet passage in the form of (1) inlet tube 10 (Figure 1a, page 4, line 27), (2) groove 15 in the top face of knob 5 (page 4, line 24), (3) tube 9 in knob 5 (Figure 4a, page 4, line 25) and (4) groove 16 in the bottom face of knob 5 (Figure 4a, page 4, line 24). One end of the fluid inlet opens up at and faces rotatable disk 6 (page 4, lines 7 and 8) including holes

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70o-70n and 71o-71n (Figure 2, page 4, lines 8 and 9 and page 4, lines 25 and 28). At least one of the holes in disk 6 is always facing outlet 11 regardless of the position of disk 6 about its axis of rotation (page 1, lines 15-18, page 5, lines 20 and 21, claim 1, as filed, lines 3-5). In particular, the whole diameter of at least one of the holes in disk 6 always is facing outlet 11 since an area Z of disk 6 communicates with outlet tube 11 (Figure 2, page 5, lines 3 and 4), as an inspection of Figure 2 indicates. It is apparent from Figure 2 that as disk 6 turns about its axis at least one of holes 70o-70n or holes 71o-71n always faces area Z of disk 6 that communicates with outlet tube 11. In addition, page 5, lines 21-23 indicates the size of area Z corresponds to at least the maximum interval between two of the holes 70o-70n, 71o-71n, regardless of the direction in which the holes are located.

The fluid outlet including tube 11 and the fluid inlet including tube 10, the body arrangement including inlet body 2 and outlet body 3 and disk 6 are arranged to enable fluid to flow from the inlet to the outlet without interruption even during rotation of disk 6 to provide gradual adjustment of the fluid flow rate from the inlet to the outlet as a function of the diameter of the holes and/or the density of the holes facing the outlet (page 1, line 13-page 2, line 3; page 5, lines 6-12; page 6 lines 4-10 and 14-16; and claim 1, lines 5-9 of the application as filed).

There is no reason to summarize the apparatus of claims 5, 25 and/or 26 since these claims depend on claim 24. The only rejection against claims 5, 25 and/or 26 is that claim 24 fails to meet the written description requirement of 35 USC 112, paragraph 1.

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#### **VI. Ground of Rejection to be Reviewed on Appeal**

The only ground of rejection to be reviewed on appeal is the rejection of claims 5 and 24-26 as failing to comply with the written description requirements of 35 U.S.C. 112, ¶1. The main issue is that Figure 2 indicates the whole diameter of at least one of holes 70o-70n, 71o-71n of rotatable disk 6 always faces outlet tube 11 regardless of the disk position about its axis. Claims 5, 25, and 26 depend on independent claim 24. Apparently allowance of claim 24 will result in allowance of claims 5, 25 and 26 because there are no allegations in the Final Rejection or the Advisory Action that claims 5, 25 and/or 26 fail to meet the requirements of 35 U.S.C. 112, ¶1. Hence, the only issue to be considered by the Board is whether claim 24 meets the written description requirements of 35 U.S.C. 112, ¶1.

#### **VII. Argument**

The specification and drawings indicate the whole diameter of at least one of holes 70o-70n, 71o-71n in disk 6 is always exposed to outlet passage 11 regardless of the disk position about its rotation axis.

The Patent and Trademark Office, i.e., the examiner, has the initial burden of presenting evidence or reasons why a person skilled in the art would not recognize in the disclosure a description of the invention defined by the claims. In re Wertheim, 541 F.2d 257, 262, 263, 191 USPQ 90, 96, 97 (CCPA 1976). In the final office action, the examiner alleged claim 24 did not meet the written description requirement of 35 USC 112, paragraph 1 because "There is no disclosure in the original application that the entire diameter of a hole is always exposed to the outlet."

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In reply, applicant pointed out that it is evident from the specification and Figure 2 of the drawing that holes 70 and 71 in rotatable disk 6 are such that the whole diameter of at least one of the holes is always facing fluid outlet passage 11. Applicant pointed out that (1) page 5, lines 3-5 indicates passage 9 enables fluid to circulate between inlet passage 10 and holes 70 and 71 in disk 6 that faces fluid outlet passage 11, (2) page 5, lines 9-14 indicates area Z communicates with outlet passage 11, and (3) page 5, lines 15-17 indicates the size of holes 70 and 71 in disk 6 opposite area Z leads towards outlet passage 11. Applicant also pointed out an inspection of Figure 2 indicates that in the depicted situation, the entire diameter of three holes are in the region circumscribed by area Z, i.e., the area of outlet passage 11 opposite the rows of holes 70 and 71, and as disk 6 rotates about its central axis that the entire diameter of at least one of holes 70o-70n or 71o-71n is always in the region circumscribed by circular area Z. Applicant also pointed out that the drawing is considered part of the written description, as are the claims as filed. *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1565, 19 USPQ2d 1111, 1118 (Federal Circuit 1991); *In re Koller*, 613 F.2d 819, 204 USPQ 702 (CCPA 1980).

In the advisory action that followed applicant's response to the final rejection, the examiner stated: "While Figure 2 shows an orifice within the outlet, the claim recites additional functional language in addition to the structure, and it remains that the claim as a whole is not supported by the original specification." From this, it appears that the examiner agrees with applicant that the requirement of claim 24 for the whole diameter of at least one of the holes to always face the outlet regardless of the position of the disk about its axis of rotation is disclosed in the application as filed. The terse statement in the advisory action fails to rebut the argument set forth by applicant in the response to the final rejection. Consequently, the examiner has not satisfied the burden of presenting evidence or reasons why a person skilled in

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the art would not recognize in applicant's disclosure a description of the requirement of claim 24 for the whole diameter of at least one of the holes to always face the outlet regardless of the position of the disk about its axis of rotation. Further, applicant has presented a substantial showing as to why the application as filed complies with the written description requirement of 35 USC 112, paragraph 1.



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### VIII. Conclusion

As pointed out in the Summary of Claimed Subject Matter and the Grounds of Rejection to Be Reviewed on Appeal the only real issue involved in this case is whether the application as filed discloses that the *whole diameter* of at least one of the holes in disk 6 always is facing the outlet. The Summary of Claimed Subject Matter indicates how the words of the specification and claims as filed disclose all remaining features of claim 24. The Summary of Claimed Subject Matter and Argument portions of the Brief clearly indicate the drawing provides a basis for the claim 24 requirement for the whole diameter of the at least one of the holes 70 or 71 in disk 6 to always face area Z of Figure 2. Indeed, the advisory action appears to admit that the arguments applicant presented in the response to the final rejection provide a basis for the foregoing requirement of claim 24. The advisory action provides no rationale to support the comment that the claim as a whole is not supported by the original specification. Thus, the examiner has failed to meet the burden of providing evidence or reasons why a person skilled in the art would not recognize in applicant's disclosure a description of the invention defined by claim 24.

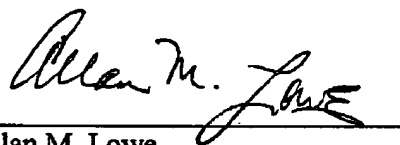
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Reversal of the rejection of claims 24-26 and 5 is in order.

Respectfully submitted,

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PATENT**IX. Claims Appendix**

5. Fluid distribution flow adjustment device according to claim 24, wherein the outlet has a diameter facing the disk greater than the spacing between at least two adjacent holes in the same row in the disk to assure that the outlet is always facing at least two holes in the disk.

24. Fluid distribution flow adjustment apparatus comprising a body arrangement having a fluid outlet and a fluid inlet opening up at one end facing a rotatable disk including holes such that the whole diameter of at least one of the holes always is facing the outlet regardless of the position of the disk about its axis of rotation; the fluid outlet, fluid inlet, the body arrangement and the disk being arranged to enable fluid to flow from the inlet to the outlet without interruption even during rotation of the disk to provide gradual adjustment of the fluid flow rate from the inlet to the outlet as a function of the diameter of the hole(s) and/or the density of the holes facing the outlet.

25. The apparatus of claim 24, wherein the disk includes at least two concentric rows of holes, the holes in each row being offset from the holes in the other row and being at a regular angular spacing, the diameters of the holes encountered in sequence in a given rotation direction of disk varying gradually for each successive hole of two different adjacent rows, the spacing between successive holes in two adjacent holes being less than the diameters of the fluid inlet and outlet, the fluid outlet or inlet facing plural holes in the disk to enable flow adjustment without interrupting the fluid flow.

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26. The apparatus of claim 24, further including a drive for turning the disk, the drive including a knob adapted to turn in the body arrangement and fixed in rotation with the disk so that the knob can be turned to adjust the flow, the knob including a passage for enabling fluid flow through the holes.

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**X. Evidence Appendix**

None.

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**XI. Related Proceedings Appendix**

None.

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